

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI**

ANGEL MARIE LUCAS	:	Case No. 1:22-cv-00741
	:	
Plaintiff,	:	Judge Douglas R. Cole
	:	Magistrate Judge Caroline H. Gentry
vs.	:	
	:	
TROOPER NICHOLAS LEWIS, <i>et al.</i> ,	:	
	:	
Defendants.	:	

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**REPORT AND RECOMMENDATION**

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Plaintiff Angel Marie Lucas is an Ohio inmate who is proceeding without the assistance of counsel. Plaintiff filed this civil rights lawsuit while she was a pre-trial detainee housed at the Scioto County Jail. (ECF No. 1-1).<sup>1</sup> She filed an application to proceed *in forma pauperis* (“IFP”) without the prepayment of fees. (ECF No. 1).

The undersigned granted Plaintiff’s motion to proceed IFP and, upon initial screening of the Complaint, recommended that certain claims and certain Defendants be dismissed. (ECF No. 3.) The undersigned also recommended that the Court abstain from hearing the remaining claims against Defendants Trooper Nicholas Lewis and Trooper John Doe and stay this lawsuit pending the resolution of Plaintiff’s criminal proceeding, as required by *Younger v. Harris*, 401 U.S. 37, 44–45 (1971). (ECF No. 3.) The report and recommendations was dated January 17, 2023 and filed January 18, 2023. (*Id.*) Plaintiff was permitted to file objections within fourteen days of the date of the report (*id.*) but did not do so. After the deadline for filing objections had passed, the District Court adopted the report and recommendations and stayed this lawsuit. (ECF No. 5.)

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<sup>1</sup> Plaintiff also filed an identical complaint on January 18, 2023. (ECF No. 4).

On March 27, 2023, Plaintiff filed a letter informing the Court that she had not timely received her mail and missed the deadline to object to the report and recommendations. (ECF No. 9). The Court construed Plaintiff's letter as a motion for extension and allowed her to submit a Motion for Reconsideration of the Court's Order Adopting the Report and Recommendations by no later than April 28, 2023. (April 12, 2023 Notation Order.) No such motion was received by the April 28 deadline. However, Plaintiff requested and was granted an extension of time to file her motion for reconsideration. (ECF No. 12; May 12, 2023 Notation Order.)

Rather than file a motion for reconsideration, Plaintiff has now filed a motion to dismiss her complaint without prejudice. (ECF No. 13). For cause, Plaintiff states that she is unable to draft a proper complaint because she does not have access to the law library, kite, and grievance system at the institution where she is housed. (*Id.*) Plaintiff states that if she were to proceed, she would need to amend her complaint to avoid dismissal but cannot do so at this time because mental health concerns make it difficult for her to stay focused. (*Id.*)

Fed. R. Civ. P. 41(a)(1)(A)(i) provides that "the plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." In this case, none of the Defendants has been served because the propriety of the claims asserted in Plaintiff's Complaint remains at issue. Accordingly, Rule 41(a)(1)(A)(i) applies and Plaintiff is authorized to dismiss this lawsuit without a court order.

Therefore, it is **RECOMMENDED** that Plaintiff's motion (ECF No. 13) be **GRANTED** and that this action be dismissed without prejudice to refiling.

**IT IS SO RECOMMENDED.**

June 14, 2023

/s/ Caroline H. Gentry

Caroline H. Gentry

UNITED STATES MAGISTRATE JUDGE